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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,147	08/07/2003	Joseph B. Busch	760-001	2805

7590 10/19/2005

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EXAMINER

GRAFFEO, MICHEL

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/636,147

**Applicant(s)**

BUSCH, JOSEPH B.

**Examiner**

Michel Graffeo

**Art Unit**

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Status of Action***

Claims 1, 4 and 5 are pending and examined.

In response to the Office Action dated July 22, 2005, Applicant has amended claim 1, canceled claims 2-3 and presented arguments for the patentability of claims 1, 4 and 5.

In light of Applicant's amendments and remarks in the Amendment dated September 23, 2005, the rejections to claims 2 and 3 under 35 U.S.C. 112 and the rejection of claims 1-2 under 35 U.S.C. 102(e) in the prior Office Action are withdrawn. Any rejection not specifically stated in this Office Action has been withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,610,276 to Melman in view of US Patent No. 5,376,374 to Zelaya and further in view of US Patent Application No. 2004/0247532 to Pinol.

Melman teaches in addition to the limitations recited above, a mouthwash comprising about 40% water (in current claims 1,4,5;see col 8 Example 4), 10% glycerin (in current claim 5;see col 7 Example 1), 0.6-12% sodium bicarbonate (in current claims 1,4,5;see col 9 Example 8), about 0.9-6.6% sodium chloride (in current claims 1,4,5;see col 9 Example 8), 0.1-6% flavorant (in current claim 5;see col 6 lines 49-53), 0.1% sodium benzoate (in current claim 5;see col 10 Example 10), 0.1-40% sweeteners such as saccharin salts (in current claim 5;see col 6 lines 22 and 31), 0.2% methylparaben (in current claim 5;see Example 10), which although is not within the 0.5 to 1% range is common in the industry and can be varied through routine optimization by one of ordinary skill in the art to meet the claimed range, about 2% of sodium lauryl sulfate (in current claim 5; see Example 3 in col 8) which can be optimized to meet the 0.01-1% claimed and up to 2% of colorants (although the specific colorants claimed are not disclosed are absent evidence to the contrary standard colorants in the industry and therefore obvious to one of ordinary skill in the art to use).

Melman does not teach from 10-20 % vinegar, from 1-5% polysorbate-20 or from 0.1 to 1% sodium citrate.

Zelaya teaches an oral rinse composition (see Abstract) comprising water and vinegar which together making up about 67 to 77 weight percent of the composition wherein the ratio of water to vinegar is from 5:2 to 2:5 (see col 4 lines 42-46) which therefore teaches an amount of vinegar of 19.4% ( $67 \text{ divided by } 7 \text{ parts} = 9.57 \times 2 = 19.4$ ). In addition, Zelaya teaches the use of sodium citrate (in current claim 5; see

col 1 line 28) which can also be optimized by one of ordinary skill in the art to meet the 0.1 to 1% claimed.

Pinol teaches an oral liquid antibacterial composition (see Abstract) comprising 2% of PEG-40 (see paragraph 57).

One of ordinary skill in the art would be motivated to combine Melman, Zelaya and Pinol and as combined would make obvious the invention as claimed. Primarily, Melman cites Zelaya which alone is sufficient to demonstrate motivation to combine the references. Additionally, each reference is directed to a liquid oral care product for stomatic indications and each employ standard ingredients for oral care products. Moreover, each of the claimed elements are standard in the oral care product industry and are each disclosed in more than one of the cited references. Thus, the claimed invention of the method was within the ordinary skill in the art to make and use at the time it was made and was as a whole, *prima facie* obvious.

### ***Response to Arguments***

Applicant's arguments filed September 23, 2005 with respect to the rejection under 35 U.S.C. 103(a) have been fully considered but they are not persuasive. Melman and Zelaya are considered properly combined and as such obviate to one of ordinary skill in the art the oral rinse comprising vinegar. In particular, Zelaya states in col 4 lines 40-46 that "the specified components of the rinse composition of this invention are essential to its providing the desired effect. In particular, water and

vinegar together make up..." Zelaya again confirms the importance of vinegar by stating that any vinegar can be used (see col 5 lines 21-23).

### ***Conclusion***

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michel Graffeo whose telephone number is 571-272-8505. The examiner can normally be reached on 9am to 5:30pm Monday to Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

14 October 2005  
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